
Volume 2. Air Operator Certification and Fractional Ownership Application

CHAPTER 1. GENERAL

SECTION 2. AIR CARRIER OR COMMERCIAL OPERATOR CERTIFICATE DETERMINATION, TYPES OF CERTIFICATES, AND APPLICABLE RULES

23. PURPOSE. This section provides direction and guidance for the issuance of air carrier certificates and operating certificates. Part 119 consolidates the certification and operations specifications requirements for persons who operate in common carriage under parts 121 and 135. Part 119 also contains definitions pertinent to operations that do not involve common carriage. The following paragraphs are intended to enhance an inspector's understanding of the basis for issuance of a particular type of certificate (air carrier or operating) and the kinds of operations authorized under those certificates and operations specifications (OpSpecs).

25. COMMON CARRIAGE VS. OPERATIONS NOT INVOLVING COMMON CARRIAGE.

A. The first step in evaluating an application is determining whether an applicant will be engaged in *common carriage*. An applicant will be engaged in common carriage if **all** of the following apply:

- (1) The applicant will "hold out" to the public (by advertising or other means)
- (2) To transport persons or property
- (3) For compensation or hire

B. An applicant is not engaged in common carriage if he does not meet all of the above elements. Operations not involving common carriage include the following definitions or exceptions. These definitions or exceptions are contained in part 119 and in sections of part 91.

(1) *Non common carriage* involves the carriage of persons or property for compensation or hire but there is NO holding out. Non common carriage operations require the issuance of an operating certificate. Operations would be conducted under part 125 or part 135, depending on the type of aircraft, seating configuration, and payload capacity. Part 125 certification and operating requirements, policies, and

procedures are found in FAA Order 8700.10, General Aviation Inspector's Handbook.

(2) *Private carriage* involves the carriage of persons or property for compensation or hire with limitations on the number of contracts. The carriage of persons or property for compensation or hire under a contractual business arrangement between the operator and another person or organization, which did not result from the operator's holding out or offering service is considered to be private carriage. (In this situation, the customer seeks an operator to perform the desired service and enters into an exclusive, mutual agreement as opposed to the operator seeking customers). Private carriage operations require the issuance of an operating certificate. Operations would be conducted under part 125 or part 135, depending on the type of aircraft, seating configuration, and payload capacity. Part 125 certification and operating requirements, policies, and procedures are found in FAA Order 8700.1, General Aviation Inspector's Handbook.

NOTE: Advisory Circular (AC) 120-12, as amended, Private Carriage versus Common Carriage of Persons or Property, provides additional guidelines for determining whether or not a transportation operation is common carriage. If an inspector cannot clearly determine whether an operation is common carriage or an operation not involving common carriage, the facts of the situation shall be presented to the regional flight standards division (RFSD). The RFSD shall coordinate the matter with both Regional Counsel and AFS-200/AFS-800, as applicable, for an appropriate determination.

(3) *Operations not involving transportation of persons or cargo.* Part 119 defines a direct air carrier as a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation. The FAA issues certificates to these direct air carriers. Title 49 of the United States Code (U.S.C.) expands the definition of an air carrier to include a person who acts "indirectly." The FAA does not

issue certificates to indirect air carriers. An indirect air carrier is a company that contracts aircraft and crew services from an air carrier or commercial operator but may not engage in control over the operational function of any flight. Examples of indirect air carriers include freight forwarders, brokers, or public charter operators. An indirect air carrier will act as an agent for either the customer or the air carrier, and their advertising must make it clear that a certificated air carrier or commercial operator provides the transportation.

(4) *Operations in which persons or cargo are transported without compensation or hire.* These operations are conducted under part 91 and do not require a certificate.

(5) *Exceptions.* Exceptions from the certification requirements of part 119 and the operating rules of parts 121 and 135 are summarized in the following paragraphs. Refer to the cited regulations for the complete regulatory content.

(a) Subpart F of part 91 applies to large and turbine-powered multi-engine airplanes and fractional ownership program aircraft. Section 91.501 lists certain operations not involving common carriage that may be conducted under part 91 instead of part 121 or part 135. These operations involve the transportation of persons or property and may involve compensation. Section 91.501 sets conditions on the amount and types of compensation for certain of these operations. Examples include:

- Ferry or training flights
- Aerial work operations
- Sales demonstration flights (limited compensation for expenses)
- Personal transportation for operator or guests (no charge, assessment or fee)
- Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or parent or subsidiary (Carriage is incidental to business and limited compensation for ownership, operating, and maintenance costs OR no charge for guests when not within scope of business of company)
- Time shares, interchange agreements, joint ownership
- Carriage of property (except mail) incidental to business (limited compensation for expenses)
- Carriage of group (with common purpose) when there is no charge, assessment or fee
- Carriage of persons for purpose of selling land, goods, property when there is no charge, assessment or fee

- Fractional Ownership

(b) Section 119.1(d) states that part 119 certification requirements do not apply to fractional ownership, or operations conducted under parts 129, 133, 137, or 139.

(c) Section 119.1(e) lists operations that do not require air carrier or commercial operator certification. Examples include:

- Student instruction
- Certain nonstop sightseeing flights conducted within a 25 statute mile radius of the airport
- Ferry or training flights
- Aerial work
- Sightseeing flights in hot air balloons
- Nonstop flights within 25 statute miles for intentional parachute operations
- Limited helicopter flights within 25 statute miles
- Part 133 (Rotorcraft external load) or 375 (Certain foreign civil aircraft operations within US)
- Emergency mail service (49 U.S.C. 41906)
- Carrying candidates in elections (section 91.321)

27. TYPES OF CERTIFICATES. There are two basic types of air operator certificates issued to U.S. applicants who will conduct operations in common carriage. See figure 2.1.2.1 for a summary of certificate requirements.

A. An *air carrier certificate* is issued to applicants that plan to conduct interstate, foreign, or overseas transportation, or to carry mail.

B. An *operating certificate* is issued to applicants that plan to conduct intrastate transportation.

29. DETERMINING APPROPRIATE OPERATING RULE AND KIND OF OPERATION.

A. Once you determine the type of certificate, the next step is to determine the appropriate operating rule and kinds of operation. There are two operating rules appropriate to air carriers and commercial operators. An applicant will operate under part 135 or part 121, or both, depending on whether the operation is scheduled and the size and type of aircraft used. There are 5 kinds of operations: domestic, flag, and supplemental operations apply to operations conducted under part 121; commuter and on-demand operations describe operations under part 135. To determine the appropriate operating rule and kind of operation, first

determine if the applicant will conduct scheduled or non scheduled operations.

(1) *Scheduled operations* include passenger operations in which the departure location and time and the arrival location are offered in advance by the operator. Scheduled operations can also carry cargo. However, an all-cargo operation is defined as non scheduled.

NOTE: Scheduled operations do not include public charter operations under 14 CFR part 380.

(2) *Non-scheduled operations* include:

(a) Passenger carrying operations in which the departure time and the departure and arrival locations are specifically negotiated with the customer or the customer's representative, or

(b) All-cargo operations, or

(c) Scheduled passenger operations in aircraft (other than turbojet-powered airplanes) that have 9 or fewer passenger seats and 7500# payload or less that operate with a frequency less than 5 round trips a week on at least one route between two or more points according to a published flight schedule, or

(d) Passenger operations conducted as a Public charter under Part 380.

B. Once it is determined whether the operation is scheduled or non scheduled, the next step is to determine the appropriate operating rule and kinds of operation. An operator can conduct operations under part 121 or 135, or both. However, the applicant will only be issued one certificate. The OpSpecs will detail the operating rules and kinds of operations. The definitions for kinds of operations are contained in CFR section 119.1 and chapter 1, section 1, paragraph 5, of this volume. Table 2.1.2.1 summarizes the appropriate operating rule and kinds of operation based on the aircraft type, size, seating configuration, and payload capacity, as well as the area of operations.

(1) Kinds of scheduled operations.

(a) Part 121 flag. (An operator who has flag authority will also receive domestic and supplemental authority.)

(b) Part 121 domestic. (An operator who has domestic authority will also receive supplemental authority.)

(c) Part 135 commuter. (An operator who has commuter authority will also receive on-demand authority.)

(2) Kinds of non scheduled operations

(a) Part 121 supplemental

(b) Part 135 on-demand

C. Special Considerations for Aircraft with Modified

Payload Capacities and/or Passenger Seat Configurations. There have been a number of instances where a Supplemental Type Certificate (STC) or other approved technical amendment to the type certification data results in a limitation or reduction of the maximum payload capacity for a particular make, model, and series airplane. This reduction is achieved through a reduction of the maximum zero fuel weight (MZFW) or other means. One instance involves the Boeing Business Jet (BBJ), but other airplanes have also been modified.

(1) Part 119 defines, for air carriers and commercial operators, which operating rule will apply to the operation of their aircraft. Part 119 references passenger seat configuration and payload capacity to determine the applicable operating rules. In general, on-demand operation of airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, AND a payload capacity of 7,500 pounds or less are conducted under part 135. On-demand operations of multiengine airplanes with a passenger seat configuration of more than 30 seats OR a payload capacity of more than 7,500 pounds are conducted under part 121.

(2) 14 CFR part 125 prescribes rules governing the operations of U.S. registered airplanes that have a seating configuration of 20 or more passenger seats, or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(3) AFS policy is that the passenger seat configuration and (maximum) payload capacity as defined in part 119 and in parts 121, 125, and 135 determine the applicable operating rule. If the passenger seating configuration or maximum payload capacity is modified, restricted, or limited through FAA-approved means (i.e., STC, Aircraft Flight Manual revision), the amended passenger seat configuration and payload capacity can be used to determine the applicable operating rules.

(4) For example, a BBJ receives an FAA-approved reduction of the MZFW that results in a maximum payload capacity of 7,500 pounds or less. This airplane also has a seating configuration of 30 or fewer passenger seats. Since it meets the applicability requirements of part 119 discussed above, this airplane would be permitted to operate under part 135 instead of under part 121. The same logic would hold true if the payload capacity had been modified to 6,000 pounds or less and a passenger seat configuration of 20 seats or fewer. In this instance, the airplane would be permitted certain operations under part 91 instead of under part 125.

31. ECONOMIC AUTHORITY - DOT CERTIFICATES AND EXEMPTIONS. The Department of Transportation (DOT) is responsible for issuing economic authority for air carriers. No economic authority is required for commercial operators conducting intrastate transportation under part 121 or 135 or for operators conducting

private or non-common carriage under part 125 or 135. The type of economic authority is generally based on whether the operation is scheduled or charter, passenger or cargo, and the aircraft seating and payload capacity. It should be noted that the DOT definitions and terminology are not identical to those contained in 14 CFR part 119 and used for FAA certification. Actions that must be taken to obtain DOT economic authority are summarized in figure 2.1.2.2. The following economic authorities are issued:

- Section 41102 certificate of public convenience and necessity for scheduled or charter operations
- Section 41103 all cargo air transportation certificate
- Commuter Air Carrier Authorization (scheduled passenger with small aircraft)
- Air taxi operator authority (non scheduled passenger or cargo with small aircraft)
- Exemption authority under Section 40109

A. DOT defines large airplanes as originally designed to have more than 60 passenger seats or more than 18,000 pounds payload. An operator with these airplanes is required to hold economic authority under section 41102 or section 41103. These certificates may also be issued to companies operating smaller aircraft. An applicant must be found “fit, willing, and able” to conduct the operations before issuance of this certificate authority.

(1) Section 41102 authority may be issued for scheduled or charter operations that serve domestic or foreign points and that carry passengers, cargo and mail, or that carry cargo and mail only. Evidence of the authority consists of a certificate, with terms, conditions, and limitations. The DOT’s Show Cause and Final Orders also provide evidence of this authority.

(2) Section 41103 authority is provided to all cargo operations. Evidence of this authority consists of a certificate with terms, conditions, and limitations. The DOT’s Show Cause and Final Orders also provide evidence of this authority.

B. A commuter air carrier is defined as a company which operates airplanes designed to have no more than 60 passenger seats that provides scheduled passenger service of five or more round-trip flights per week on at least one route according to published flight schedules. In accordance with part 298, a commuter air carrier must be found fit, willing, and able prior to being authorized to operate its scheduled passenger service. Evidence of this authority consists of a Commuter Air Carrier Authorization with terms, conditions, and limitations. The DOT’s Show Cause and Final Orders also provide evidence of this authority.

C. An air taxi operator is defined as a company which operates aircraft originally designed to have no more than 60 passenger seats or a cargo payload of 18,000 pounds and carries cargo or mail on either a scheduled or charter basis,

and/or carries passengers on an on-demand basis or limited scheduled basis (i.e., four or fewer round trips a week on at least one route according to published flight schedules) only. An air taxi operator must register under 14 CFR part 298 (on OST Form 4507). The FAA Air Transportation Division, Program Management Branch (AFS-260), maintains the 14 CFR part 298 registrations. The OST Form 4507 and OST Form 6410 (certificate of insurance) are to be submitted whenever changes occur in the information reported on the forms. Every air taxi operator who plans to commence operations under part 135 must register with AFS-260 not later than 30 days prior to commencement of such operations. The registration of an on-demand air carrier shall remain in effect until it is amended by the carrier or canceled by the Administrator. Evidence of this authority is the DOT registration (OST Form 4507).

NOTE: An airplane for which the passenger seating configuration or maximum payload capacity is modified, restricted, or limited in order to operate under part 135 is subject to a DOT fitness determination if it was originally designed for more than 60 passengers or a maximum payload of 18,000 pounds.

D. A company may also provide certain operations pursuant to exemption authority from the DOT. Generally, exemption authority is issued only to companies which already hold some type of section 41102 certificate authority from DOT and wish to provide operations outside of the authority granted by that certificate. Evidence of exemption authority may consist merely of a DOT confirmation of oral action taken, or it may take the form of a DOT order or written notice granting such authority.

NOTE: If an inspector is unsure of the type of operations authorized by the registration, certificate, or exemption evidence presented by an air carrier, he/she should contact DOT’s Air Carrier Fitness Division; Phone 202-366-9721, to confirm the authority held.

E. DOT staff, in support of DOT fitness determinations, may occasionally query field inspectors concerning accident, incident, and enforcement histories and qualifications of an applicant or an applicant’s management personnel. Other than responding to these queries, a field inspector should not be involved in an applicant’s efforts to obtain DOT economic authority. It is solely the responsibility of an applicant to obtain DOT economic authority. Field inspectors, however, shall not issue an FAA air carrier certificate unless an applicant can show proof that appropriate DOT economic authority has been obtained.

F. For more information, go to the OST website: <http://ostpxweb.dot.gov/aviation/certific/certpkt.pdf>.

26. - 36. RESERVED

**FIGURE 2.1.2.1.
CERTIFICATION TABLE**

TYPE OF CERTIFICATE	SEATING CAPACITY PAYLOAD CAPACITY	14 CFR OPERATING PART	KIND OF OPERATION
AIR CARRIER CERTIFICATE	Scheduled Operations (common carriage passenger operation; departure, location, and time and arrival location offered in advance by the operator)		
Common Carriage (holding out to transport persons or property for compensation or hire) <ul style="list-style-type: none"> • Interstate, or • Foreign, or • Overseas, or • Carriage of mail 	<ul style="list-style-type: none"> • Turbojets, or • Multi-engine airplanes with 10 or more passenger seats, OR more than 7500 pounds payload capacity • Within or between 48 contiguous states, entirely within a state, territory, or possession, or special authorizations 	121	Domestic
	<ul style="list-style-type: none"> • Turbojets, or • Multi-engine airplanes with 10 or more passenger seats, OR more than 7500 pounds payload capacity • Entirely outside U.S., take-off or landing outside 48 contiguous states, or between Alaska, Hawaii, territories, and outside U.S. 	121	Flag
	<ul style="list-style-type: none"> • Airplanes with 9 or fewer passenger seats AND 7500 lbs. or less payload capacity, or any rotorcraft 	135	Commuter
	<ul style="list-style-type: none"> • Airplanes, other than turbojets, with 9 or fewer passenger seats AND 7500 lbs. or less payload capacity, or any rotorcraft used in scheduled passenger-carrying operations with a frequency less than 5 round trips per week on at least one route between two or more points according to the published flight schedules 	135	On-demand

FIGURE 2.1.2.1. CON'T

TYPE OF CERTIFICATE	SEATING CAPACITY PAYLOAD CAPACITY	14 CFR OPERATING PART	KIND OF OPERATION
AIR CARRIER CERTIFICATE (continued)	Nonscheduled Operations (negotiated departure time, departure location, and arrival location; or all-cargo; or part 380 public charter)		
	<ul style="list-style-type: none"> • Passenger operations with multi-engine airplanes more than 30 passenger seats OR more than 7500 pounds payload capacity <p>NOTE: A multi-engine airplane with 10 to 30 seats or a turbojet listed in OpSpecs for part 121 domestic or flag operations must be operated under part 121 supplemental for on-demand operations</p>	121	Supplemental
	<ul style="list-style-type: none"> • Passenger operations with airplanes 30 or fewer passenger seats AND 7500 lbs. or less payload capacity, or any rotorcraft • NOTE: A multi-engine airplane with 10 to 30 seats or a turbojet that is listed in OpSpecs for part 121 domestic or flag operations cannot be operated under part 135 on-demand rules, but that specific airplane must be operated under part 121 supplemental rules for non scheduled operations 	135	On-demand
	<ul style="list-style-type: none"> • All-cargo operations with airplanes having a payload capacity of more than 7,500 pounds 	121	Supplemental
	<ul style="list-style-type: none"> • All-cargo operations with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft. 	135	On-demand

FIGURE 2.1.2.1. CON'T

TYPE OF CERTIFICATE	SEATING CAPACITY PAYLOAD CAPACITY	14 CFR OPERATING PART	KIND OF OPERATION
OPERATING CERTIFICATE	Scheduled Operations (common carriage passenger operation; departure, location, and time and arrival location offered in advance by the operator)		
<ul style="list-style-type: none"> • Common Carriage in intrastate operations (holding out to transport persons or property for compensation or hire) 	<ul style="list-style-type: none"> • Turbojets, or • Multi-engine airplanes with 10 or more passenger seats, OR more than 7500 pounds payload capacity • Within or between 48 contiguous states, entirely within a state, territory, or possession, or special authorizations 	121	Domestic
	<ul style="list-style-type: none"> • Airplanes with 9 or fewer passenger seats AND 7500 lbs. or less payload capacity, or any rotorcraft 	135	Commuter
	Nonscheduled Operations (negotiated departure time, departure location, and arrival location; or all-cargo; or part 380 public charter)		
	<ul style="list-style-type: none"> • Multi-engine airplanes with more than 30 passenger seats OR more than 7500 pounds payload capacity • NOTE: A multi-engine airplane with 10 to 30 seats or a turbojet listed in OpSpecs for part 121 domestic or flag operations must be operated under part 121 supplemental for on-demand operations 	121	Supplemental
	<ul style="list-style-type: none"> • Airplanes with 30 or fewer passenger seats AND 7500 lbs. or less payload capacity, or any rotorcraft • NOTE: A multi-engine airplane with 10 to 30 seats or a turbojet that is listed in OpSpecs for part 121 domestic or flag operations cannot be operated under part 135 on-demand rules, but that specific airplane must be operated under part 121 supplemental rules for non scheduled operations 	135	On-demand

FIGURE 2.1.2.1. CON'T

TYPE OF CERTIFICATE	SEATING CAPACITY PAYLOAD CAPACITY	14 CFR OPERATING PART	KIND OF OPERATION
OPERATING CERTIFICATE (continued) • Operations not involving common carriage (non common carriage or private carriage; see part 119 definition)	<ul style="list-style-type: none"> • Airplanes with 20 or more passenger seats and 6000 lbs. or more payload capacity 	125	N/A
	<ul style="list-style-type: none"> • Airplanes with less than 20 seats and less than 6000 lbs. payload capacity and any rotorcraft 	135	On-demand

FIGURE 2.1.2.2
ACTIONS TO OBTAIN DOT AUTHORITY

ACTIONS TO OBTAIN DOT ECONOMIC AUTHORITY				
FAA Type of Operation	FAA Operating Rule	DOT Type of Operation and Required Authority	Operator Responsibility	DOT Responsibility
Airplanes with more than 9 seats or more than 7,500 lbs. payload in scheduled passenger operations	Part 121 domestic or flag	41102 Certificate <ul style="list-style-type: none"> • Airplanes with more than 60 seats or 18,000 lbs. payload • 41102 Certificate or Commuter Air Carrier Authorization (with Part 298 exemption) • Airplanes with 60 seats or less and 18,000 lbs. payload or less 	41102 or Commuter Authorization <ul style="list-style-type: none"> • Apply for fitness determination • Submit requested info & proof of insurance • Register with DOT (for Commuter only) (OST Form 4507) 	41102 or Commuter <ul style="list-style-type: none"> • Post application to docket for public viewing • Conduct fitness determination • Issue a show cause order inviting comments on why operation should not be authorized • Issue final order with 41102 certificate or Commuter Authorization, the effectiveness of which is conditioned upon receipt of appropriate FAA authority • Issue registration (for Commuter only)

FIGURE 2.1.2.2 CON'T
ACTIONS TO OBTAIN DOT AUTHORITY

FAA Type of Operation	FAA Operating Rule	DOT Type of Operation and Required Authority	Operator Responsibility	DOT Responsibility
Airplanes with more than 30 seats or 7,500 lbs. payload (non-scheduled or all-cargo)	Part 121 supplemental	<p>41102 Certificate</p> <ul style="list-style-type: none"> Airplanes with more than 60 seats or 18,000 lbs. payload <p>41102 or 298 exemption/registration</p> <ul style="list-style-type: none"> Airplanes with 60 seats or less or 18,000 lbs. payload or less 	<p>41102 Certificate</p> <ul style="list-style-type: none"> Apply for fitness determination Submit requested info & proof of insurance <p>298 exemption</p> <ul style="list-style-type: none"> Register with AFS-260 (OST Form 4507) & show proof of insurance (OST Form 6410) 	<p>41102 Certificate</p> <ul style="list-style-type: none"> Post application to docket for public viewing Conduct fitness determination Issue a show cause order inviting comments on why operation should not be authorized Issue final order with 41102 certificate, the effectiveness of which is conditioned upon receipt of appropriate FAA authority <p>298 exemption</p> <ul style="list-style-type: none"> Issue registration
NOTE: DOT certificates or registrations are written evidence of official economic authority issued by the DOT.				

FIGURE 2.1.2.2 CON'T
ACTIONS TO OBTAIN DOT AUTHORITY

FAA Type of Operation	FAA Operating Rule	DOT Type of Operation and Required Authority	Operator Responsibility	DOT Responsibility
Airplanes with 9 seats or fewer or 7,500 lbs. payload or less or rotorcraft in scheduled passenger operations (5 or more round trips a week in at least one market)	Part 135 commuter	41102 certificate or Commuter Air Carrier Authorization (with Part 298 Exemption for Scheduled Passenger Operations) <ul style="list-style-type: none"> Airplanes with 60 seats or fewer and 18,000 lbs. payload or less 	41102 or Commuter Authorization <ul style="list-style-type: none"> Apply for fitness determination Submit requested info & proof of insurance Register with DOT (for Commuter only) (OST Form 4507) 	41102 or Commuter <ul style="list-style-type: none"> Post application to docket for public viewing Conduct fitness determination Issue a show cause order inviting comments on why operation should not be authorized Issue final order with 41102 certificate or Commuter Authorization, the effectiveness of which is conditioned upon receipt of appropriate FAA authority Issue registration (for Commuter only)
Airplanes with 30 seats or fewer and 7,500 lbs. payload or less or rotorcraft in on-demand passenger and/or cargo operations	Part 135 on-demand	298 Exemption for Non-Scheduled Operations <ul style="list-style-type: none"> Airplanes with 60 seats or fewer and 18,000 lbs. payload or less 	298 exemption <ul style="list-style-type: none"> Register with AFS-260 (OST Form 4507) & show proof of insurance (OST Form 6410) 	298 exemption <ul style="list-style-type: none"> Issue registration

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